



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159941

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's application for replacement FS benefits when Petitioner was without power for six days and provided verification of this household misfortune to the agency.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner suffered a power outage from July 25, 2014 through July 31, 2014.

3. On July 30, 2014 Petitioner submitted an application for replacement FS benefits. Petitioner submitted verification of her power outage with her original application. On August 6, 2014 the agency denied Petitioner's application for replacement FS benefits for failing to provide verification of the power outage.
4. On August 20, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.
5. In preparation for the fair hearing the agency discovered that Petitioner had provided verification of her power outage. The agency continued to deny Petitioner's application for replacement FS benefits because the verification letter only mentioned July 25. The record was held open, and following the hearing Petitioner submitted a letter from WE energies showing her power was out from July 25, 2014 to July 31, 2014.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(a)(2). The statute directs the agency that:

Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit

7 C.F.R. § 274.6(a)(6)(ii). There is no time limit for providing verification. *Id.* In addition, the statute places the burden on the agency to verify the household misfortune prior to issuing replacement FS benefits. *Id.* I further note that the state agency has 10 days to issue replacement FS benefits, except that the agency "shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent." 7 C.F.R. § 274.6(a)(5)(ii).

The issue in this case is whether Petitioner failed to meet the statutory requirements for replacement FS benefits. Petitioner reported her power outage in writing on the last day of her outage. Petitioner submitted verification that her power was out July 25 with her application. Petitioner stated that she lost \$200 worth of food during the power outage. The statute directs the agency to verify the power outage and allows the agency to delay issuance of benefits if the request appears fraudulent. In this case Petitioner suffered a household misfortune and meets all the statutory requirements for receiving replacement FS benefits. Even if her power was only out for a few hours, if she lost food, she would meet the statutory requirements.

The issue now becomes what food if any did Petitioner lose during her power outage. Were Petitioner's power only out for a few hours, her statement that she lost \$200 worth of food would not be credible. However, Petitioner provided documentation that she was without power for nearly one week. Petitioner testified that she lost food kept in her freezer that she purchased in previous months. It is very likely that

a person without power for nearly one week would loss \$200 worth of food. The agency did not present evidence with the exception of Petitioner's FS benefit usage from July to show that Petitioner lost less than \$200 worth of food. Therefore, I can only conclude that Petitioner lost \$200 worth of food in a multi-day power outage.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's application for replacement FS benefits. Petitioner is entitled to \$200 in replacement FS benefits for food that she lost during a six day power outage.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to issue Petitioner \$200 in replacement FS benefits. The agency has 10 days from the date of this decision to issue these replacement FS benefits.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of September, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 23, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability